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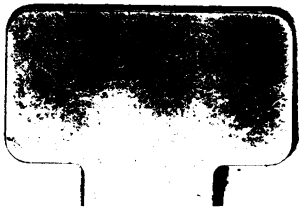

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CAN ENGLISH LAW BE TAUGHT

AT

THE UNIVERSITIES?

AN INAUGURAL LECTURE,

DELIVERED AT ALL SOULS COLLEGE, 21ST APRIL, 1883,

BY

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essential part of legal education. Knowledge of law is still, as it has been for centuries, acquired by actual practice in the courts, or by the imitative practice miscalled "reading" in chambers. My purpose in this address is to set forth, to the best of my power, and with the utmost impartiality, the marked merits, and the no less patent defects, of the present system of legal study, and to show what is the field which this system leaves open for professorial and academical teaching.

The prevailing method of reading in chambers is so much a part of our customary life that, like many other English institutions, its peculiarity hardly strikes us; yet it is certainly a method of instruction which would strike a foreigner as strange, not to say as unaccountable. Its essential features are exactly hit off by the account which (it is said) an eminent lawyer has left on record of the training which ultimately led him to the woolsack. "The first day I went into chambers I drew a set of pleadings; they were returned to me every word of them altered except the names of the plaintiff and the defendant, with a request from my pleader that I would in future leave a wider space between the lines of my drafts. This injunction was all the teaching in law which I ever received." His lordship of course did not mean to imply that he learned nothing in chambers; what he did mean is, that his instruction consisted solely in seeing how the pleader with whom he read actually pleaded or gave

opinions. His lordship's experience was by no means singular. When a student "reading for the bar" enters the chambers of a barrister, the arrangement entered into between the so-called pupil and his so-called tutor is rather singular. The pupil does not undertake to learn, the tutor does not in any way undertake to teach. Our student pays a hundred guineas, and the barrister undertakes that his pupil shall see all the work that goes on in chambers, and have an opportunity of trying his own hand at doing it. This is the real and most valuable advantage gained by the student. What teaching (if any) he may obtain is a matter of chance. Many excellent lawyers have no talent as teachers. Many barristers who would make admirable professors have their hands so full of business that they have not the time, even if they had the inclination, to instruct their pupils. Our young man reading for the bar may get, and often does get, immense indirect help from the tutor in whose chambers he works, or from the fellow pupils with whom he talks, but all which he has a right to look to is the seeing and working at the papers which come in day by day. If he is to learn law, he must pick it up for himself. The task is not an easy one. The youth who has acquired the privilege of reading the papers which lie on the table of a pupil-room, finds himself at first engaged in a maze of perplexities. He may, or may not, have read some elementary law books. His reading may, or quite as likely may not, be appropriate to the

work which passes before his eyes. He is, in all probability, ignorant of the very terms of the legal questions which he has to consider. He reads papers, for example, about a charter-party, whilst hunting through *Maclachlan* to find out what a charter-party is. He attempts to settle whether Brown can sue Jones on a bill of exchange, whilst he tries to gather from *Byles* the difference between an acceptor and an indorser. He is immersed in the intricacies of marine insurance, whilst perplexed by a vague confusion between barratry and bottomry, and whilst attempting to master in *Arnould* the difference between "particular" and "general" average. Several circumstances add greatly to our beginner's perplexities. If he has had the fortune to get into "good chambers," the papers which he studies one day are gone out the next. The set which he begins reading on Monday refers to a bill of exchange; the lot which he takes up on Tuesday turns on covenants running with the land. On Wednesday he attempts to understand a contract of insurance; on Thursday he is immersed in the endeavour to fathom the liability of a railway company for the carriage of goods, to draft a statement of defence or an opinion upon evidence. He is daunted at one moment by difficulties which the slightest legal knowledge would at once remove; he is the next moment plunged over head and ears in a case destined to puzzle the House of Lords. He hardly knows what are the books to which he ought to look for guidance, and when he

finds the right book he has hardly the ability to use it. *Fisher's Digest*—a sort of legal dictionary—the inestimable friend of those who have learned how to consult the oracle, is about as useful to the beginner as would be *Liddell and Scott* to an undergraduate who was not quite at home in the Greek alphabet and knew nothing of Greek grammar. Add to all this, that a case sent in by an attorney looks a very different thing from the same case when divested of all irrelevant matter by a reporter, or when made the subject for comment in a text-book. To our student it is a puzzling and often an ill-digested narrative, of which he does not perceive the point and only half understands the terms. Before he can make up his mind on what may be the very simple question whether A. can sue B., he has to determine what are the facts relevant to the matter in hand, and he is all but certain to fall into one or both of two opposite errors—either he does not see that a lot of details highly interesting to the parties or to their attorneys, transactions which have taken place years before the dispute began, or letters written months after the writ was issued, the ingratitude of the plaintiff, the monstrous dishonesty of the defendant, and the like, have nothing to do with the question for decision, which may ultimately reduce itself to the inquiry whether a particular letter constitutes a proper memorandum of agreement; or our beginner, because he finds that nine-tenths of the circumstances forced on his attention are immaterial, omits to notice the

tenth circumstance, on which the whole matter turns. He is put, in short, to make bricks without straw, or rather without having ever been taught how bricks are to be made. The oddity of the thing is, that he after all gets in due time, mainly by the process of imitation, to make pretty tolerable bricks. For this rough, if not exactly ready, method of learning from contact with real business has some inestimable merits. There are at least three things of the highest value which can be learned, if at all, in court or in chambers, and can be learned nowhere else.

First.—The mechanism of legal practice, such as the drafting of deeds, the drawing of claims, the arguing of cases, and the like, must be learned in chambers or in court. Traditions were at one time current of a counsel, better known as a novelist than as a lawyer, who supplemented (it is said) the inadequacy of his practice by the fertility of his imagination. His pupils, it is told, drew sham declarations, answered by fictitious pleas, or giving rise to speculative demurrers. But this example of imaginative practice gained more notoriety than success, and does not commend itself for imitation. In the Law Schools of the United States, and at the Moot Courts, which have been with most happy results revived in one at least of the Inns of Court, a great deal is taught and learned by means of arguments carried on by students or young barristers in the presence of experienced lawyers, and with all the solemnity of proceedings in court. But for

reasons which easily suggest themselves this mode of instruction could not be practised with advantage either at Oxford or at Cambridge.

Secondly.—In chambers, or from actual business alone, can be acquired the invaluable habit of disengaging from a crowd of details the relevant facts of a case, and of applying to the occurrences of life the appropriate principles of law. To do this is, as I have already pointed out, the most difficult of the many difficult tasks to be performed by a student in chambers. But though the difficulty is needlessly increased by the defects of the system which encourages beginners to deal with facts before they have mastered principles, there is no part of reading-in half as beneficial as the necessity which it imposes upon a young man of considering law in relation to the actual transactions of daily life.

Thirdly.—The capacity for forming sound opinions is a quality which can be acquired by practice alone. A trained lawyer of sufficient learning and industry can generally reduce the possible answers to a given case to one of two plausible opinions. To have brought down a complex and doubtful problem to the narrow choice between two possible views is of itself no small achievement. But the true difficulty lies in determining which of these two competing views is (as the slang of the Bar goes) the "better opinion," or, in other words, which will prove ultimately right when submitted to the true test of legal experiment—the decision of the judges. In

the performance of this feat is to be found the criterion of high legal ability. Lawyers of equal knowledge, of equal industry, even in many ways of equal power, differ in nothing so much as in this capacity for forming sound opinions. We all of us know men of profound learning, of infinite ingenuity, of exhaustless subtlety, whose opinions have but one defect, namely, that they never coincide with the judgment of the House of Lords. There are, on the other hand, men whose bare opinions carry infinite weight, because these opinions are known to have the quality of turning out to be right. This characteristic of soundness is of course mainly the result of good sense. But good sense may be cultivated, and good sense itself is not precisely the same thing as the power to estimate what is likely to be the judicial view of good sense. Experience and practice can do a great deal to bring a man's mind into harmony with judicial opinion. This quality of judiciousness is not a fruit to be fostered by lectures.

The merits, in short, of the present system may be all summed up in the one word "reality." It brings a student in contact with the real actual business, and fosters in him qualities which cannot be produced by any theoretical teaching, however excellent. Readiness, technical skill, sound judgment, the power of disentangling from a mass of bewildering details the essential features of a complicated case, the habit of applying to the actual affairs of men the well-established rules of law, are qualities to be acquired,

in so far as they are not the gifts of nature, by practice, and by practice alone. And a young man would utterly mistake his interests who, for the sake of hearing the lectures of the most erudite and most eloquent of professors, sacrificed the advantage of that reading in chambers which, with all its singularities, has for generation after generation trained up a succession of great lawyers. But to admit, or rather to proclaim, that from reading in chambers something, and something of great worth, can be gained which no other mode of training can by any possibility replace, is a very different thing from admitting that a hand-to-mouth system of learning under which a young man when reading for the Bar is plunged into details, and left to pick up legal principles haphazard, is a perfect system, or does not exhibit glaring defects which lead to grave evils. It is all very well to be told that a system which has turned out Mansfield, and Eldon, and Campbell, and Westbury, is above criticism. Common sense rejects this appeal *ad verecundiam*. It is demonstrable that legal education in England has grave defects, and that the circumstances of modern times have rendered these faults of far more importance than they were even as late as fifty years ago.

I have stated without reserve the immense advantages of reading in chambers. The inherent defects of such reading are patent on a bare description of the course of study actually pursued by the pupil of a barrister or of a pleader. These deficiencies are

threefold. The knowledge gained in chambers is fragmentary, is unsystematic, is wasteful of time and labour.

First.—The knowledge gained in chambers is fragmentary, for the present system inevitably leads to a most incomplete mastery of legal principles.

A student when his reading has ended may have gained much information about some special department of law in which his teacher excels, say the law of insurance, of patents, or of joint stock companies. He knows nothing of anything else. Of the general principles which pervade the whole field of law he knows probably almost less than nothing, for he has learned to doubt whether such principles exist. Yet no form of scepticism is more baseless in itself or more fatal to the attainment of legal eminence. For whoever will study with intelligence the current numbers of the *Law Reports* may soon convince himself that matters of principle rather than matters of detail are the real subject of perplexity to lawyers and to judges. Is a marriage contracted in England by a resident in Scotland an English or a Scotch marriage? Can a judgment obtained in a foreign court by fraud be enforced in England? What is the exact liability (if any) of a husband for the contracts made by his wife? What is meant by a "lawful assembly?" What is the bearing on liberty of discussion to be attributed to the dogma that Christianity is part of the law of the land? These and a score more of similar questions have recently perplexed our tribunals. Each of them raises questions of principle;

some of them touch the very foundations of law. It were idle to suppose that these inquiries can be dealt with by men who have never been accustomed to trace the applications of general maxims even in the minutiæ of daily practice.

Secondly.—The knowledge gained in chambers is unsystematic, for there is nothing in the mode in which law is learned to induce a student to study law as a whole.

Few are the lawyers who have even tried to obtain command of the elementary doctrines both of common law and of equity, even on one single branch of law. Fewer still are the men who have grasped the canons which pervade and govern the whole law of England. When we have reflected on the nature of reading in chambers, we hardly need inquire for the cause for that narrow conception of legal knowledge which is often found to be the weak side of men who, endowed with great ability, have practised law for years with unwearying assiduity.

Thirdly.—The knowledge gained in chambers is wasteful of time and of labour. The gravest fault of the present system is, that, while it involves untold waste of effort, it robs the learner of half the gains which he ought to derive from the invaluable experience to be gained by the observation of practice.

Here again facts speak for themselves. If a student devotes his attention to the practice before his eyes, he has not time to read books. If he plunges into the perusal of treatises and reports, he has no time to

study briefs and pleadings. Nor is reading of much good to a person unprovided with any scheme of study, and with no guidance as to the books which deserve his attention. Hence the very business which goes on before his eyes loses half its instructiveness, and a pupil when he quits chambers leaves them with a sense of having through misdirected labour wasted a great opportunity.

Two remarks suggested by a survey of the defects inherent in the established mode of legal education are of special importance.

The first of these observations is that a student however industrious cannot, as things now stand, correct by assiduous study of legal works the deficiencies of reading in chambers. For the literature of the law has, until the beginning of the reform which now dates back some twenty-five or thirty years, reproduced and stereotyped all the most characteristic faults of legal training. Our best works, such as Smith's *Leading Cases*, are at bottom a mere accumulation of notes on detached points of curious rather than useful learning. They are deficient in all general conceptions, in all grasp of principles, in all idea of method. Authors who have learned their trade by rule of thumb have never even aimed at the accurate analysis or definition of legal ideas. Hence the technical terms of law are as bad as any technicalities can be; they are technical without being precise, or, when apparently popular, are full of latent ambiguity. Attempt to define, in accordance

with received authorities, such terms as a "chose in action," "personal property," a "void" contract, an "implied agreement," and you will not only assent to my criticism, but will soon discover the cause of all this hopeless confusion. Generations of practitioners have neither concerned themselves with definition, nor indeed have understood its nature or its necessity. Turn, for example, to a writer whose book was twenty years ago the student's guide to the law of contract. Mr. J. W. Smith opens his treatise with a chapter on the "Nature and Classification of Contracts." Of the nature of a contract he tells his readers nothing. What he does tell them is that agreements consist of contracts of record, contracts under seal, and simple contracts. He first substitutes division for definition, and then gives a division which, for absolute uninstructiveness, may be compared to an attempt to classify animals by dividing them into dodos, lions, and all animals which are not dodos or lions. For the unmeaningness of Mr. Smith's classification can be fully realised by those only who know that the term "simple contract" is a mere negative expression, meaning nothing more than any contract which is not a contract of record and is not a contract under seal. The division, indeed might from many points of view afford a text for lengthy comment. Its most characteristic feature, which ought not to be left unnoticed, is that it thrusts into prominence the anomalous and rare arrangements known as contracts of record, which (if contracts at all) are the last kind of

agreements with which it is desirable to perplex the attention of students. As to the true elements of a contract—the offer, the acceptance, the promise—our teacher says nothing. If any one will compare the sterile classification of J. W. Smith with the fruitful analysis to be found in the works of my friends the Professor of Jurisprudence and Sir W. Anson, he will perceive at once how great is the confusion introduced into a simple topic by a writer who has learnt law without mastering its principles. A critic will also observe that J. W. Smith, with other such respectable writers as Chitty or Addison, illustrates in every page a fault which has till recently pervaded the whole of our legal literature, and for want of any corrective has infected the intellectual habits of English lawyers. This vice is the tendency to give inordinate attention to exceptions and anomalies, to the neglect of the far more important canons or rules to which these exceptions refer. The original source of this fault is to be found in the fact that English law is built up on cases, and that every reported case at any rate is the record of some exception to a general rule. Hence we are all of us forced to go a good deal on what an eminent lawyer has termed "law taken for granted." This law taken for granted is nothing else than the principles of legal science collected by inference from recorded exceptions. Text-books repeat the exceptions and generally omit to notice the principles.

A second observation is that if a student cannot

find in literature the elements of instruction which he misses at chambers, the vices which deform the existing system of legal education are of more consequence at the present time than they were in the days of our forefathers.

Till the beginning of the present century, or till a considerably later period, it was possible to pursue an exhaustive scheme of legal reading. Students who were able to explore the whole realm of law did not absolutely need a plan in order to master its intricacies. In the time of Coke all the English law committed to writing did not probably exceed in bulk thirty or forty volumes of the present *Law Reports*. An author writing towards the close of the last century, whose object it was rather to magnify than to understate the difficulty of learning legal principles, states that "the laws of this country including the acts of the legislature and the decisions of the supreme courts of justice are not numbered in fewer than fifty folio volumes." And if Paley, though not likely to have been grossly misinformed, cannot be cited as an authority on legal subjects, we can absolutely rely on the statements of Mr. Wallace, who in his work on the Reporters writes that up to the year 1776, the whole number of reports in England both in law and equity did not much exceed one hundred and fifty volumes. A man therefore of strenuous industry, such as Lord Campbell, could even half a century ago read through something like the whole compass of the law. Add to this that at any

rate a century ago whole branches of the law, such as the law of partnership, the law of contracts, the law of principal and agent, the rules of so-called private international law, the law of joint stock companies, and the like, were until recent times either imperfectly developed or one might almost say non-existent. Nor can we measure the increased difficulties to be met by a learner who attempts an exhaustive system of study by the increase in the bulk of the reports or by the growing compass of the domain of law. From the accession of George II. (1714) down to say 1830, the principles of English law remained, as far as Parliament was concerned, both unchanged and practically unchangeable. Lord Eldon would as soon have proposed a bill for abolishing the monarchy as have introduced a measure like the Married Woman's Property Act, 1882. All this is now changed. The *Reports* amount to between 1,300 and 1,500 volumes, the *Revised Statutes* which come down to 1868 number fifteen hugh volumes; the *Reports* are yearly increased by ten volumes, the statute-book swells in bulk with each Parliament, and every volume contains important innovations which sometimes shake or appear to shake the very foundations of our legal system. Meanwhile the lawyer is compelled to consult foreign as well as English reports. In 1776, and for some years later, there was not a single American report in existence. The United States are now enriched or oppressed with four thousand volumes of reports, and the library of the Middle Temple contains a

mass of American reports which far exceeds in amount the whole legal literature of England at a date when America claimed her independence. The exhaustive system of reading has become in the strictest sense an impossibility; it is a tradition of the past. You can no more read law in the mode in which Coke, or Holt, or Blackstone, or even Campbell read it, than you could carry on the trade of England in the ships which sufficed for British commerce in the days of Elizabeth or even in the time of George III.

While the modern student needs educational guidance far more than did his fathers, he has by a strange turn of fortune lost the guides on whose aid his predecessors relied. Pleaders have a bad name; their art is the theme of the best legal satire in the language, but to them law and lawyers owe a heavy debt of gratitude. The science of pleading consisted in the careful discrimination of law from fact. Pupils trained in a pleader's chambers were therefore compelled in pursuing their routine of practice to learn the principles of law from teachers who were never absent in court, and who could not excel in pleading without some comprehension of principles. The Common Law has not produced for the last century a single eminent lawyer who was not trained by a special pleader. Pleading is abolished, and the pleaders—the true professors of the Common Law—will soon be a forgotten race.

To recognise the shortcomings and still more the advantages of reading in chambers is almost the same

thing as determining how far law can be taught at the Universities. Academical instruction at Oxford ought to form the proper preparation for observation of business in London; the proper sphere of professorial activity is to supply all the defects which flow directly or indirectly from a one-sided system of practical training. It is for professors to set forth the law as a coherent whole—to analyse and define legal conceptions—to reduce the mass of legal rules to an orderly series of principles, and to aid, stimulate, and guide the reform or renovation of legal literature. Let me for a few minutes trace out with some care each of these spheres for academical teaching.

1. At the Universities a student can be taught to regard law as a whole and to consider the relation of one part of English law to another. The revived study of Roman law has already done much to bring the chaotic mass of English law into some sort of form, and to this source must undoubtedly be in great part attributed the advance made by the legal literature of the last twenty years in clearness and in symmetry. But there is no reason in the nature of things why the law of England should not itself be exhibited as a model of the clear and orderly arrangement of legal rules and conceptions. There is not the least reason why students should not be supplied, or still better be taught to supply themselves, with outlines of English law as well marked as those of the only system which can claim to be its rival. He who has obtained such a chart has done much more

than merely increase his knowledge. He has gained not only a scheme of study but also a plan into which he can piece, and by piecing retain, the knowledge which he gains from reading or practice. A young man, who begins reading for the Bar with such a general knowledge of his subject as may be obtained in Germany, in France, in Scotland, and in the United States from academical teaching, might easily learn from study in chambers or from attendance in the courts more law than is often possessed by barristers of many years' standing.

2. At the Universities can be taught what from the nature of things can never be learnt in chambers —the habit of analysing and defining legal conceptions. Such analysis is not the work of men wholly occupied in the daily requirements of legal practice, yet its importance can hardly be overrated. No competent judge will, I venture to say, dispute that half the difficulties both of legal study and of legal practice arise from the inaccuracy and vagueness of legal terms. We all know how much has been done to clear up the law of contract by a careful analysis of an agreement. Any one who has turned his attention in that direction knows that Savigny's theory of possession has solved many puzzles of English law. It elucidates the rules as to title by prescription; it throws light on matters so apparently technical as the nature of trespass and the principles governing the action of trover, it enables us to reduce to a consistent whole the law of domicil, and oddly enough

renders intelligible one perplexity at least in that well-studied enactment—the seventeenth section of the Statute of Frauds. There is indeed no more appropriate or profitable sphere for professorial industry than the explanation, the simplification, and the analysis of legal terminology. It is hardly too much to predict that till the terminology of the law has been reviewed and settled, as it has been in other countries, under the influence of professorial teaching, England will never possess a code at all worthy of the merits of English law.

3. At the Universities can be taught, and can hardly, as things stand, be taught elsewhere, the habit of looking upon law as a series of rules and exceptions, and of carefully marking off the exact limits of ascertained principles. This is the true cure for the fatal tendency to remember exceptions and to forget obvious rules. The first duty of a competent teacher is to impress upon himself and upon his pupils that law can be digested into a set of rules and exceptions, and to make his hearers feel that general, common, normal principles are far more important than what is exceptional, uncommon, or abnormal.

By adequate study and careful thought whole departments of law can thus be reduced to order and exhibited under the form of a few principles which sum up the effect of a hundred cases, and can thus be understood and remembered when no memory could retain even the names of the cases on which

these rules depend. Take one example of my meaning. Let any one try to make in the form of rules and exceptions a definite statement (such as would be found in a code) of the different classes of persons who can claim to be British subjects. The task does not present any insuperable difficulty. Three or four short enactments, not more than at most ten or twelve cases, afford the necessary materials. But any one who acts on my suggestion will find that the work is a labour of time and trouble, and also that when it is duly performed he has in his mind a series of propositions as to the acquisition and loss of British nationality which makes him permanently master of a difficult topic. He will also discover that on some few points the law of nationality is strictly speaking unsettled. He will know where the true perplexities lie, and when, as recently happened, a case decides one of these moot points, he will easily note the effect of the decision and retain it in his memory. He will further learn that the intricacy of the existing law arises historically from the conflict and ultimate compromise between two rival theories of allegiance. What can be achieved in one narrow department of our subject may by industry and intelligence be gradually accomplished throughout the whole domain of English law. No one professor, no Faculty of professors, could within a limited time reduce the whole law of England to this kind of natural code. But one may confidently assert that nothing can be taught to students of greater value,

either intellectually or for the purpose of legal practice, than the habit of looking upon law as a series of rules; and further that a school of lawyers imbued with this turn of mind would gradually reduce the whole chaotic mass of legal principles to a clear, logical, and symmetrical form. Here, however, we stand on the confines of the last, the most interesting, and perhaps the most important sphere of professorial energy.

4. At the Universities can be aided, stimulated, and guided as nowhere else the much-needed reform, I had almost said creation, of legal literature.

No country is so rich as our own in the records of judicial decisions. Fifteen hundred volumes and more of *Reports* are the noblest of monuments to the substantial merits of our law, to the sound sense, to the justice, to the acumen, to the intellectual power, to the literary ability, of our judges. One shelf of the library at the Temple would be amply sufficient to contain every volume which does credit to our legal literature. We have no history of English law as a whole deserving the name, we have not twenty treatises worthy to stand side by side with the productions of great jurists in other countries. If our wealth in reports is the standing memorial to the greatness of our judges, the poverty of our legal literature is surely one result of the non-existence till recent years of any legal professoriate. On academical teachers, at any rate, naturally falls the task, as full of importance as it is of interest, of

aiding that reform or revival of legal literature which is one of the most remarkable phenomena of the last thirty years. If we look to the needs of our students, it is clearly of primary importance to supply them with works which may enable them to see that law is a rational study, and can be treated like other sciences in a clear, rational, and interesting manner. More than one of my colleagues has already taken a hand in this task with preeminent and acknowledged success. If youthful learners are capable of gratitude, there must surely be a large class of students who render daily thanks to Sir William Anson and Professor Pollock for having delivered them from the burden of Addison's ponderous confusion, and from the useless toil imposed by the attempt to understand the futile subtleties of J. W. Smith. But though the absolute necessity of the case must suggest to all teachers the need for creating treatises worthy of the law of which they treat, another motive may well direct energetic teachers towards the path of legal authorship. By teaching and by literature they can influence far more than is generally believed not the form only but the substance of the law. The rules of law which are supposed to be so inflexible are, for the most part, in fact enactments of judicial legislation, and nothing is more remarkable or more intelligible than the ease with which judicial legislation is swayed by the pressure of authoritative opinion. Busy magistrates, dealing with cases as they occur, take their principles from text-writers.

Particular authors have notoriously, even in recent times, modelled, one might almost say brought into existence, whole departments of law. Pleading was fifty years ago systematised into an art by one lawyer of consummate logical ability; the law of damages has grown up, it is said, under the influence of a writer still living. The vast field of so-called private international law has been mapped out in England by three or four rules derived from *Huber*, and by the doctrines expounded in Story's *Conflict of Laws*. But in England, as elsewhere, the effect produced by single writers is nothing to the effect which may be produced by a school of teachers.

Throughout this lecture, it will be observed, no contrast has been drawn between the functions of a professor as a teacher, and his duties by way of investigation, research, or authorship. No contrast has been drawn because there exists no opposition. The process indeed of teaching and re-teaching elementary doctrines to a necessarily ignorant class involves some waste of labour. Exposition (it may be said with truth) is not erudition. But the waste of labour, such as it is, is or ought to be more than repaid by two advantages in the position of a lecturer. He will soon find that he cannot explain that which he does not understand; easy and lucid lectures are the fruit of hard reading and long if not painful meditation. The need again of making one's thoughts clear to one's self and clear to others is the most admirable corrective to the pedantry, the crotcheti-

ness, the unreality, which certainly are the vices of so-called "paper lawyers," and which I venture to conjecture are faults which occasionally may infest the studies of professors and jurists. At any rate the qualities which ought to distinguish academical teaching of law—the habit of looking at our subject as a whole, the desire to define and (with a constant eye however to received authorities and to actual facts) simplify legal ideas and conceptions, the effort to reduce law to a series of propositions which are both intelligible and in correspondence with the decisions of the court and the opinions of practising lawyers—these qualities are all fostered by the necessity for clear and effective exposition of actual law, and are also characteristics which ought to be found in authors who wish to produce monumental works of legal literature. It is difficult to imagine that if law books had in England been composed as in other lands by jurists who wrote with a constant eye to an audience of students, we should have witnessed the growth of such literary monstrosities as Smith's *Leading Cases*, in which pile after pile of notes is laid so to speak in layer after layer on the top of some case, worthless in itself, and entirely crushed under the weight of superincumbent comment; that we should all of us have racked our brains over the crabbed learning of Lord St. Leonards; or that successive generations should have seen one province of law after another fall a prey to the calamitous energy of authors as conspicuous by their lack of

insight as by their portentous and multifarious industry. But the immense influence on law of writers and teachers—the two need not for our present purpose be distinguished—may be proved by far stronger arguments than general considerations as to the effect of exposition. On this matter we may consult the lessons of large and various experience. The very demand for a reform in our legal literature is merely one side of what may fairly be called a most remarkable intellectual movement or revolution. During the last thirty years, three men of genius have given a new impulse to the study of law. Macaulay has created a new type of codification. As an historian he is certainly not the head of a school; as a reformer, as a codifier of the law he is the parent not only of legislative codes which may possibly survive the memory of his history, but of all the unauthorised though invaluable digests of English law such as Mr. Chalmers's *Law of Bills of Exchange*, or Sir James Stephen's *Digest of Criminal Law*, of which the one has received and the other is probably destined to receive legislative authority. Austin has given a new impulse to legal speculation, and has influenced far more than they perceive writers who do not share his views, and who do not avowedly adopt his system of logical analysis. Sir Henry Maine has opened a new field of historical research, and with Austin has rekindled public interest in the law of Rome. Of these men two were professors, and Macaulay, with his intense love of explanation,

and his passion for illustration, approached far more nearly to the professorial type than to that of the barrister who shines at quarter sessions, on circuit, at *nisi prius*, or even in the House of Lords. If, however, it be said that the influence of these three men but indirectly illustrates the effect of professorial teaching, we must extend our gaze so as to take in a wider view. The names of Pothier, of Savigny, of Wangerow, of Mancini, of Bluntschli, are sufficient to remind us that the great works of foreign jurists, the treatises or the codes which have been the result and the embodiment of their teaching, were in many instances the more or less immediate growth of lectures. But we may look nearer home and examine the legal condition of a country of which the law certainly receives in England far less attention than it deserves.

Scotland is, as regards reports, less richly endowed than England, but even cursory observation shows that Scotland possesses at least three or four institutional writers whom it would be hard to match with English authors of the same merit. On inquiry I am informed by the greatest living authority on the legal history of his country that the best Scotch institutional works are in effect the product of lectures. Baron Hume's *Commentaries on the Definition and Punishment of Crime*, John Erskine's *Principles of the Law of Scotland*, George Joseph Bell's *Principles of the Law of Scotland*, are each and all of them the fruit of lectures delivered in the

University of Edinburgh. Something the same may be said with substantial truth though not with verbal correctness of the most famous among Scotch legal treatises, *Stair's Institutions*. Lord Stair studied at Glasgow; he was never a professor, for the sufficient if not satisfactory reason that no law professorship existed at that university until the beginning of the last century. But the philosophical parts of the *Institutions* may, as I am informed by Lord Stair's biographer, be traced back with certainty to the lectures which he gave as Regent in the University of Glasgow.

If any one should suggest that systems based on the law of Rome lend themselves to professorial exposition better than does the law of England, the suggestion can be at once met by an appeal to facts. On this point, as in fact on the whole subject of this lecture, the experience of the United States is full of instruction. The citizens of the Union are certainly neither pedants nor, in general, theorists; but at the present moment English law is taught, and admirably taught, in the colleges of America. The practising lawyers, the very sharp attorneys of New York, would laugh in your face if you suggested that nothing could be learnt worth knowing from the lectures of Professor Dwight, of whom the vast majority of them are, or have been, pupils. And the practising counsel of Massachusetts would undoubtedly tell you that the best preparation for practice in court is study in the lecture rooms of

Professor Langdell and his colleagues of Harvard University. This, be it noted, is not the experience of a day or of a single generation. The learned and accurate *Commentaries* of Kent were delivered as lectures in Columbia College, New York. Story's *Conflict of Laws*, his *Equity Jurisprudence*, his *Law of Agency*—the whole, in fact, of a series of works which are the best of their kind in the English language—were delivered by him as Dane Professor in the University of Harvard. There has never too, we must add, in America, been any encouragement given to the idea that there was an inconsistency between practical knowledge and the theoretical exposition of the law. Kent retired to his professorship from high judicial office. Kent's *Commentaries* have been so re-edited as to be transformed into a new work of as high worth as the *Commentaries* themselves by the most distinguished among American writers on law, who has himself just passed from a professor's chair at Harvard to a seat on the honoured Bench of Massachusetts. Story's lectures were delivered at Harvard, while Story himself was by far the most eminent among the Judges of the Supreme Court at Washington.

The experience of England has not, it may be said, favoured the academical teaching of law. In a country where there has for centuries existed no professorial class, no certain inference can be drawn from the fact that our law books are not, like those of other countries, the result of lectures. But here we

have, happily, one of those exceptions which precisely prove the rule. In this University, and in this College, it is impossible to forget for a moment that the one book of law which can claim a high and permanent place in the literature of England was originally produced as lectures to the University of Oxford. The great commentator, it may be urged with truth, was a man endowed with the rarest combination of gifts. He united the wide and practical experience of law belonging to an eminent counsel who commanded the ear of the court with the literary facility and graces of style to be expected in a distinguished man of letters. His work, again, was not precisely the work which is required from the teachers of to-day. All this is true. Blackstone affords us rather an example for encouragement than a model for imitation. But the preeminent influence exerted by the professorial lectures which make up Blackstone's *Commentaries* is an almost irresistible argument in favour of the conclusion at which we arrive from whatever side we approach our subject. The immense merits and the patent defects of the present system of teaching; the actual wants of young men studying the law; the faults which have marred the legal literature of England; the movement of reform by which these faults are being day by day corrected or removed; the experience of the whole of continental Europe, of Scotland, of America, and, in the single instance to which it is possible to refer, of England itself—all supply the answer to our

original question. There is no real rivalry between reading in chambers and teaching at the Universities. The law of England can be taught, and if only the teachers are competent, and clearly perceive the limits and aim of their teaching, can be taught as it can nowhere else, at the English Universities.

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